



King County

1200 King County
Courthouse
516 Third Avenue
Seattle, WA 98104

Meeting Agenda

Government Accountability, Oversight and Financial Performance

Councilmembers: *Bob Ferguson, Chair; Pete von Reichbauer, Vice Chair;
Larry Gossett, Kathy Lambert*

Staff: *Jenny Giambattista, Lead Staff (206-296-1646)
Joanne Rasmussen, Committee Assistant (206-296-0333)*

9:30 AM

Tuesday, February 14, 2012

Room 1001

Pursuant to K.C.C. 1.24.035 A. and F., this Government Accountability, Oversight and Financial Performance Committee meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.

1. **Call to Order**
2. **Roll Call**
3. **Approval of Minutes**

December 6, 2012

To show a PDF of the written materials for an agenda item, click on the agenda item below.

Discussion and Possible Action

4. [Proposed Motion No. 2011-0489](#) pp 7-12

A MOTION confirming the executive's appointment of Lee Larson, who resides in council district eight, to the King County international airport roundtable, as the Georgetown representative.

Sponsors: Mr. McDermott

Mike Alvine, Council Staff



*Sign language and communication material in alternate formats can be arranged given sufficient notice (206-1000).
TDD Number 206-1024.
ASSISTIVE LISTENING DEVICES AVAILABLE IN THE COUNCIL CHAMBERS.*



5. [Proposed Motion No. 2012-0069](#) pp13-46

A MOTION urging the Washington state Legislature to enact the Washington Voting Rights Act of 2012.

Sponsors: Mr. Ferguson and Mr. Gossett

Mike Alvine, Council Staff

David A. Perez, Fred T. Korematsu Center for Law & Equality, Seattle University's School of Law

Contingent upon referral to the Government Accountability, Oversight and Financial Performance Committee

Briefing

6. [Briefing No. 2012-B0005](#) pp 47-66

Accountable Business Transformation (ABT) Program Status Report

Caroline Whalen, County Administrative Officer and ABT Program Sponsor

Gwen Clemens, Deputy Program Sponsor and Change Management Manager

Mike Herrin, ABT Program Manager

Discussion and Possible Action

7. [Proposed Ordinance No. 2011-0493](#) pp 67-75

AN ORDINANCE making willful violation of wage payment requirements a basis for debarment or suspension from consideration for the award of contracts with the county; and amending Ordinance 12138, Section 18, as amended, and K.C.C. 4.16.145.

Sponsors: Mr. Ferguson and Mr. Gossett

Mike Alvine, Council Staff

Ken Guy, Finance Director, Finance & Business Operations Division

Other Business

Adjournment



King County

1200 King County
Courthouse
516 Third Avenue
Seattle, WA 98104

Meeting Minutes Government Accountability and Oversight Committee

*Councilmembers: Kathy Lambert, Chair; Reagan Dunn, Vice
Chair;
Larry Gossett, Pete von Reichbauer*

*Staff: Jenny Giambattista, Lead Staff (206-296-1646)
Joanne Rasmussen, Committee Assistant (206-296-0333)*

9:30 AM

Tuesday, December 6, 2011

Room 1001

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1. **Call to Order**

Chair Lambert called the meeting to order at 9:41 a.m.

2. **Roll Call**

Present: 4 - Mr. Gossett, Mr. Dunn, Ms. Lambert and Mr. von Reichbauer

3. **Approval of Minutes**

*Councilmember Gossett moved approval of the September 20, 2011 meeting minutes.
The motion passed.*

Discussion and Possible Action

4. **Proposed Motion No. 2011-0370**

A MOTION confirming the appointment of Paul Berry, as the representative of the Washington State Democratic Party to the King County citizens' elections oversight committee.

Sponsors: Mr. Gossett

Mike Alvine, Council Staff, briefed the committee. Paul Berry, appointee to the Citizens' Election Oversight Committee (CEOC), answered questions from the members. This item was expedited to the December 12, 2011, King County Council agenda.

**A motion was made by Gossett that this Motion be Recommended Do Pass
Consent. The motion carried by the following vote:**

Yes: 4 - Mr. Gossett, Mr. Dunn, Ms. Lambert and Mr. von Reichbauer

5. Proposed Motion No. 2011-0476

A MOTION confirming the executive's appointment of Fred Quarnstrom, who resides in council district two, to the King County international airport roundtable, as an at-large representative.

Sponsors: Mr. Gossett

Mike Alvine, Council Staff, briefed the committee. Fred Quarnstrom, appointee to the King County International Airport Roundtable, answered questions from the members. This item was expedited to the December 12, 2011, King County Council agenda.

A motion was made by Gossett that this Motion be Recommended Do Pass Consent. The motion carried by the following vote:

Yes: 4 - Mr. Gossett, Mr. Dunn, Ms. Lambert and Mr. von Reichbauer

Briefing

6. Briefing No. 2011-B0192

King County Courts' Current Use of Remote Video Technology

Councilmember Lambert introduced the briefing topic. A King 5 News clip from November 17, 2011 was shown. The following panel briefed the committee and answered questions from the members during a powerpoint presentation: Corinna Harn, Assistant Presiding Judge, District Court, Trish Crozier, Chief Administrative Officer, District Court, Paul Sherfey, Chief Administrative Officer, Superior Court, Lea Ennis, IT Director, Superior Court, and Clif Curry, Council Staff.

This matter was Presented

Discussion and Possible Action

7. Proposed Ordinance No. 2011-0491

AN ORDINANCE approving the extension of franchise 13637 for eighteen months and the transfer of franchise 13637 to WAVEDIVISION I, LLC.

Sponsors: Ms. Lambert

Mike Alvine, Council Staff, briefed the committee and answered questions from the members. David Mendel, Regional Communications Services Manager, King County Information Technology (KCIT), and Jim Penney, Executive Vice President, WAVEDIVISION I, answered questions from the members.

A motion was made by Gossett that this Ordinance be Recommended Do Pass. The motion carried by the following vote:

Yes: 4 - Mr. Gossett, Mr. Dunn, Ms. Lambert and Mr. von Reichbauer

8. Classification and Compensation Items

Nick Wagner, Council Staff, briefed the committee and answered questions from the members on two new positions and one pay range change. Nancy Buonanno Grennan, Director, Human Resources Division, answered questions from the members.

A motion was made that these items be Passed. The motion carried by the following vote:

Yes: 4 - Mr. Gossett, Mr. Dunn, Ms. Lambert and Mr. von Reichbauer

9. Proposed Ordinance No. 2011-0474

AN ORDINANCE authorizing the condemnation of certain property for an easement for construction of a storage tank and appurtenances to control combined sewer overflows for the South Magnolia combined sewer overflow project, capital improvement project 423607.

Sponsors: Mr. Phillips

Councilmember Phillips joined the committee members on the dais for this item. Beth Mountsier, Council Staff, briefed the committee and answered questions from the members. Pam Elardo, Director, Wastewater Treatment Division, Department of Natural Resources and Parks, and Mike Merrit, Director of Governmental Relations, Port of Seattle, answered questions from the members.

Councilmember Gossett moved Amendment 1. Amendment 1 passed. This item was expedited to the December 12, 2011, King County Council agenda.

A motion was made by Gossett that this Ordinance be Recommended Do Pass Substitute. The motion carried by the following vote:

Yes: 4 - Mr. Gossett, Mr. Dunn, Ms. Lambert and Mr. von Reichbauer

Briefing

10. Briefing No. 2011-B0193

2011 Government Accountability and Oversight Committee Accomplishments

Chair Lambert thanked the staff for their committee work in 2011.

This matter was Deferred

Other Business

There was no further business to come before the committee.

Adjournment

The meeting was adjourned at 12:09 p.m.

Approved this _____ day of _____.

Clerk's Signature



Government Accountability, Oversight and Financial Performance Committee

STAFF REPORT

Agenda Item:	4	Name:	Mike Alvine
Proposed No.:	2011-0489	Date:	February 14, 2012
Invited:	Lee Larson, appointee to the King County International Airport Roundtable Leslie Barstow, Staff Liaison to King County International Airport Roundtable		

SUBJECT: MOTION confirming the executive's appointment of Lee Larson, who resides in Council district eight, to the King County International Airport Roundtable as the Georgetown community representative.

SUMMARY: The executive has forwarded for council consideration and approval the appointment of Lee Larson (Proposed Motion 2011-0498) to the King County International Airport Roundtable for a three-year term expiring August 31, 2014.

Ms. Larson is currently employed as a technical publications illustrator by a firm that is a contractor with the Boeing Company. Previously she worked for Boeing as technical publications analyst and as user interface designer for approximately four years. Ms. Larson has a Bachelor's of Fine Arts in Art, Media and Culture from the University of Washington. She also holds a certificate in Scientific Illustration from the University of Washington and a Master's of Fine Arts from the Academy of Art University, San Francisco. Ms. Larson is an active member of the Georgetown Community Council and lives across the street from Boeing Field.

BACKGROUND:

The council established the Airport Roundtable in 1997 (Ordinance 12785). The purpose of the Roundtable is to advise and makes recommendations to the airport management, County Executive and County Council on the airport budget, programs, regulations, master plans, noise reduction strategies and other related matters.

The Roundtable is comprised of sixteen regular voting members and one non-voting member representing the following interests:

- **Airport communities** (eight members). Communities include: Georgetown; Magnolia or North Seattle; Tukwila; Renton/Kent/South King County; Beacon Hill/Rainier Valley; West Seattle; and Unincorporated King County;
- **Airport tenants** (four members);
- **Commercial off-site user or airport-related services provider** (one member);
- **Pilots' association** (one member)
- **Labor** (two members); and
- **Federal Aviation Administration** (one ex-officio non-voting member).

Members of the Roundtable can serve up to two consecutive terms of three years or until a successor is appointed. Terms of the members are staggered consistent with the provisions of K.C.C. 2.28. The Roundtable is authorized to appoint subcommittees that may include representatives that are not regular members of the Roundtable to serve for a limited duration. The Executive may also appoint non-voting ex-officio members to serve at the Executive's discretion.

ATTACHMENTS:

1. Proposed Motion 2011-0489 (Attachments are available upon request)
2. Executive Transmittal Letter received November 17, 2011



KING COUNTY

Attachment 1

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

February 10, 2012

Motion

Proposed No. 2011-0489.1

Sponsors McDermott

1 A MOTION confirming the executive's appointment of Lee
2 Larson, who resides in council district eight, to the King
3 County international airport roundtable, as the Georgetown
4 representative.

5 BE IT MOVED by the Council of King County:

6 The county executive's appointment of Lee Larson, who resides in council district
7 eight, to the King County international airport roundtable, as the Georgetown

8 representative, for a three-year term to expire on August 31, 2014, is hereby confirmed.

9

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. Application, B. Financial Disclosure Statement, C. Board Profile, D. Appointment Letter

October 26, 2011

The Honorable Larry Gossett
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Gossett:

Enclosed for consideration and approval by the King County Council is a motion confirming the appointment of Lee Larson, who resides in council district eight, to the King County International Airport Roundtable, as the Georgetown representative.

The appointment of Ms. Larson is for a three-year term expiring August 31, 2014. Her application, Code of Ethics Financial Disclosure Statement, current board profile and appointment letter are enclosed for your information.

If you have any questions about this appointment, please have your staff call Rick Ybarra, liaison for boards & commission, at 206-263-9651.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Acting Chief of Staff
Mark Melroy, Senior Principal Legislative Analyst, BFM Committee
Anne Noris, Clerk of the Council
Rick Ybarra, Liaison for Boards & Commissions, King County Executive Office
Leslie Barstow, Staff Liaison
Lee Larson

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Government Accountability, Oversight and Financial Performance Committee

STAFF REPORT

Agenda Item:	5	Name:	Mike Alvine
Proposed No.:	2012-0069	Date:	February 14, 2012
Invited:	David Perez, Fred T. Korematsu Center for Law & Equality at Seattle University's School of Law		

SUBJECT: A motion urging the Washington state Legislature to enact the Washington Voting Rights Act of 2012.

SUMMARY:

The proposed motion is a policy statement that if approved, would urge the Washington State legislature to enact the Voting Rights Act of 2012.

BACKGROUND:

In 1965 Congress passed the federal Voting Rights Act (VRA). Congress extended the act in 1970, 1975, 1982 and 2006. The primary purposes of the act are to ensure that defined protected classes, largely persons of color, are allowed free access to vote and to ensure that voting and electoral processes do not dilute the voting power of minorities or prevent minorities from holding office.

In 2002 the State of California enacted its own Voting Rights Act. Now a similar proposed law has been introduced in the Washington State Senate (Senate Bill 6381) and the House of Representatives (House Bill 2612). One stated purpose of having a state voting rights act is to reduce the long wait times and costs associated with pursuing a law suit under the federal Voting Rights Act.

ANALYSIS:

The proposed motion is a clear policy decision to support the pending Voting Rights Act in the state legislature. Attached to this staff report are the Senate and House bills, along with their legislative reports. At their core, the federal and proposed state voting rights acts help empower protected classes, such as racial and ethnic minorities, to elect representatives from their groups when there is a clear difference in voting preferences between the minority and the majority voters. Such a difference in voting preferences is called “polarized voting”.

An example of such a situation would be a city that elects all of its city council members as “at large” positions. If there was a sizeable minority population in the city, with very different voting preferences for candidates, that could be demonstrated by statistically valid analysis, such a city could be sued to employ a different voting system, such as electing city council members by district rather than at large.

ATTACHMENTS:

1. Proposed Ordinance 2012-0069
2. House Bill 2612 and House Bill Report on HB 2612
3. Senate Bill 6381 and Senate Bill Report on SB 6381



KING COUNTY

Attachment 1

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

February 10, 2012

Motion

Proposed No. 2012-0069.1

Sponsors Ferguson and Gossett

1 A MOTION urging the Washington state Legislature to

2 enact the Washington Voting Rights Act of 2012.

3 WHEREAS, to enforce the Fifteenth Amendment to the United States

4 Constitution, which prohibits states from denying citizens the right to vote based on race

5 or color, Congress passed the federal Voting Rights Act in 1965, and

6 WHEREAS, the federal Voting Rights Act was extended in 1970, 1975, 1982 and

7 2006, affirming the need for protections and the importance of combating persistent

8 discrimination in voting and elections, and

9 WHEREAS, the federal Voting Rights Act outlaws discriminatory voting

10 practices, including electoral structural changes that systematically dilute the voting

11 strength of minority citizens, and

12 WHEREAS, high costs and long waits associated with legal action in federal

13 court may discourage and hinder the ability of parties to bring suits to enforce their rights

14 under the federal Voting Rights Act, and

15 WHEREAS, building upon the protections provided by the federal Voting Rights

16 Act and to provide for a more accessible and local means of protecting voting rights, the

17 state of California enacted the California Voting Rights Act in 2002 and has since seen an

18 marked increase of minorities in local elected office and civic engagement among

19 minority communities, and

20 WHEREAS, the Washington Voting Rights Act of 2012, Senate Bill 6381 and
21 House Bill 2612, modeled after the law in California, has been introduced and is
22 currently under consideration by the Washington state Legislature, and

23 WHEREAS, if enacted, the Washington Voting Rights Act of 2012 would
24 promote equal representation by helping ensure at-large elections and district-based
25 elections could not be drawn or maintained in a manner that dilutes the votes of a
26 protected class or denies a protected class an equal opportunity to elect candidates of its
27 choice or an equal opportunity to influence the outcome of an election, and

28 WHEREAS, King County has responsibility for administering elections and is
29 committed to an integrated effort to apply the countywide strategic plan's principle of
30 "fair and just" in all the county does, and

31 WHEREAS, ensuring a fair and just electoral process for members of a protected
32 class and equal opportunity to influence electoral outcomes are essential to our system of
33 representative democracy;

34 NOW, THEREFORE, BE IT MOVED by the Council of King County:

35 The metropolitan King County council urges the Washington state Legislature to
36 enact the Washington Voting Rights Act of 2012.

37

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, ____.

Dow Constantine, County Executive

Attachments: None

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BILL REQ. #: H-3465.2

HOUSE BILL 2612

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Kenney, Hunt, Appleton, Hasegawa, Reykdal, Moscoso, Ladenburg, Ryu, Jinkins, Upthegrove, Pettigrew, Ormsby, McCoy, Roberts, and Hudgins

Read first time 01/18/12. Referred to Committee on State Government & Tribal Affairs.

AN ACT Relating to the Washington **voting rights act**; and adding a new chapter to Title 29A RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1** This **act** may be known and cited as the Washington **voting rights act** of 2012.

NEW SECTION. **Sec. 2** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "At-large method of election" means any of the following methods of electing members of the governing body of a political subdivision:

(a) One in which the voters of the entire jurisdiction elect the members to the governing body;

(b) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body; or

(c) One which combines at-large elections with district-based elections.

(2) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district. District-based elections shall include elections where only one official is elected in a district-based election district and shall include the election districts within existing boundaries of a city, a school district, or other district organized pursuant to state, county, or local law.

(3) "Political subdivision" means a geographic area of representation created for the provision of government services including, but not limited to, a state, a county, a city, a school district, or other district organized pursuant to state law.

(4) "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal **voting rights act** 42 U.S.C. Sec. 1973 et seq.

(5) "Racially polarized **voting**" means **voting** in which there is a difference, as defined in case law regarding enforcement of the federal **voting rights act**, 42 U.S.C. Sec. 1973 et seq., in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group **voting** behavior as approved in applicable federal cases to enforce the federal **voting rights act**, 42 U.S.C. Sec. 1973 et seq., to establish racially polarized **voting** or other evidence and methodologies which a court finds relevant and admissible may be used for purposes of this section to prove that elections are characterized by racially polarized **voting**.

NEW SECTION. Sec. 3 (1) At-large elections and district-based elections may not be drawn or maintained in a manner that denies an equal opportunity of a protected class to elect candidates of its choice or an equal opportunity to influence the outcome of an election, as a result of the vote dilution of voters who are members of a protected class.

(2) An at-large election district or a district-based election district is dilutive, and in violation of this section, when it is shown that:

- (a) A political subdivision utilizes an at-large or district-based election district;
 - (b) The elections in the political subdivision are racially polarized;
 - (c) The racially polarized **voting** in the political subdivision results in vote dilution where the protected class members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election; and
 - (d) A remedy exists that will provide members of the protected class with an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election. Such a remedy will not adversely affect or diminish the impact of those district-based election districts that are protected by the federal **voting rights act**, 42 U.S.C. Sec. 1973, et seq.
- (3) The fact that members of a protected class are not geographically compact or concentrated to constitute a numerical majority in a proposed district-based election district shall not preclude a finding of racially polarized **voting** that results in vote dilution.
- (4) Racially polarized **voting** that results in vote dilution is shown by demonstrating that there is a difference in **voting** preferences between members of a protected class and the rest of the electorate. Such a difference in **voting** preferences may be demonstrated by the methodologies specified in section 2(5) of this **act** or other evidence and methodologies that a court finds relevant and admissible.
- (5) In determining whether there is racially polarized **voting** that results in vote dilution under this section, elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision shall be analyzed. Only elections conducted prior to the filing of an action pursuant to this chapter shall be used to establish or rebut the existence of racially polarized **voting** that results in vote dilution.
- (6) The occurrence of racially polarized **voting** that results in vote dilution will be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the **rights** and privileges of members of a protected class who are voters of the political subdivision which is the subject of an action filed pursuant to this chapter.
- (7) The election of candidates who are members of a protected class and who are preferred by voters of the protected class and who were elected prior to the filing of this action pursuant to this chapter, as determined by an analysis of **voting** behavior, shall not preclude a finding of racially polarized **voting** that results in vote dilution.
- (8) Members of different protected classes may file an action jointly pursuant to this chapter if they demonstrate that their combined **voting** preferences as a group are different from the rest of the electorate and demonstrate that there is racially polarized **voting** that results in vote dilution consistent with the standards established in this section.
- (9) In an action filed pursuant to this section, ninety days after the defendant or defendants file an answer, the plaintiff shall disclose to the other parties the identity of any expert witness retained to testify regarding the existence of racially polarized **voting** that results in vote dilution in elections occurring within the political subdivision that is the subject of the action. This time period may be adjusted by the court for good cause.
- (10) Ninety days after the defendant or defendants have been served with the identity and written report of the expert witness retained by the plaintiff or plaintiffs, the defendant or defendants shall disclose to the plaintiffs the identity of any expert witness retained to testify regarding the existence of racially polarized **voting**.
- (11) Disclosure and written reports shall not be required for an expert that is retained as a nontestifying consultant.

(12) The fact that members of a protected class are not geographically compact or concentrated to constitute a majority within an existing district-based election may not preclude a finding of racially polarized **voting** that results in vote dilution.

(13) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(14) For purposes of any applicable statute of limitations, a cause of action under this section arises every time there is an election pursuant to an at-large method of election or a district-based election district that is the subject of an action pursuant to this section.

(15) A plaintiff initiating an action under this section shall not be required to disclose pursuant to any discovery request or judicial proceeding under this section whether the plaintiff voted in favor of a candidate or did not vote in favor of a candidate. A plaintiff initiating an action under this section shall not be required to disclose pursuant to any discovery request or proceeding under this section whether the plaintiff voted in favor or in opposition of any state propositions and referenda, state initiatives, local measures and referenda, or local initiatives. The plaintiff's right to the secrecy of the plaintiff's vote is preserved and is not waived by the filing of an action pursuant to this section.

(16) In seeking a temporary restraining order or a preliminary injunction a plaintiff shall not be required to post a bond or any other security in order to secure such equitable relief.

(17) An action filed pursuant to this section is a suit based in equity. As a suit in equity, there is no right to trial by jury.

NEW SECTION. Sec. 4 (1) Upon a finding of a violation of section 3 of this **act**, the court shall implement appropriate remedies, including the imposition of a district-based election district that is tailored to remedy the violation. The court may direct the affected jurisdiction to draw or redraw district boundaries or appoint an individual or panel to draw or redraw district lines.

(2) In tailoring a remedy consisting of district-based elections, the court shall implement a district-based election district that is geographically compact. The fact that members of a protected class do not constitute a numerical majority within a proposed district-based election district shall not preclude the implementation of such a district-based election district. In tailoring a remedy, the court shall order the implementation of a district-based election district where the members of the protected class are not a numerical majority in order to provide the protected class an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.

(3) In tailoring a remedy after a finding of a violation of section 3 of this **act**, the court shall order new elections to be scheduled at the next date authorized by state law for conducting elections. All of the positions that were elected pursuant to the at-large or district-based election district that was the subject of the action filed pursuant to this chapter and have at least two years remaining in their terms of office shall be subject to new elections in order to continue their term of office.

NEW SECTION. Sec. 5 (1) In any action to enforce this chapter, the court shall allow the prevailing plaintiff, other than the state or political subdivision thereof, reasonable attorneys' fees and a fees multiplier that takes into account the contingency, the novelty and complexity of the filed action, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs.

(2) Prevailing defendants shall not recover any award of attorneys' fees.

(3) Prevailing defendants shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(4) A fees multiplier is determined by the court by multiplying a numerical value and the fees lodestar. The fees lodestar is determined by multiplying the number of reasonable hours expended by an attorney or support personnel, such as law clerks, paralegals, and legal assistants in the action filed pursuant to this chapter, times a reasonable hourly rate that is consistent with the rates charged by attorneys and firms located within a city or an area where the attorneys and firms filing the action are located.

(5) A prevailing plaintiff shall not be required to first notify a political subdivision prior to the filing of an action pursuant to this chapter that such an action will be filed against the political subdivision in

order for a prevailing plaintiff to be awarded reasonable attorneys' fees, a fees multiplier, and costs pursuant to this section.

(6) A plaintiff shall be deemed to be a prevailing party for purposes of this section if the political subdivision which is the subject of an action filed pursuant to this chapter adopts or implements a district-based election district after the action is filed that is different from the district-based election district that is the subject of the action filed.

(7) A prevailing plaintiff shall recover, as part of reasonable attorneys' fees and fees multiplier award, work performed in any ancillary administrative, legislative, or citizen redistricting commission proceeding where the prevailing plaintiff party sought to secure a district-based election district that was different from the district-based election district ultimately adopted by a governing body or a citizen's redistricting commission and that was ultimately declared by a court to be in violation of section 3 of this **act** in an action filed by the prevailing plaintiff.

NEW SECTION. Sec. 6 Any voter who is a member of a protected class and who resides in a political subdivision where a violation of section 3 of this **act** is alleged may file an action in the superior court of the county in which the political subdivision is located. If the action is against a county, the action may be filed in the superior court of such county, or in the superior court of either of the two nearest judicial districts as determined pursuant to RCW 36.01.050(2). There is no requirement that an action filed pursuant to this chapter be filed as a class action.

NEW SECTION. Sec. 7 Sections 1 through 6 of this **act** constitute a new chapter in Title 29A RCW.

--- END ---

ID#

HOUSE BILL REPORT

HB 2612

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to the Washington voting rights act.

Brief Description: Enacting the Washington voting rights act of 2012.

Sponsors: Representatives Kenney, Hunt, Appleton, Hasegawa, Reykdal, Moscoso, Ladenburg, Ryu, Jenkins, Upthegrove, Pettigrew, Ormsby, McCoy, Roberts and Hudgins.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/26/12, 1/30/12 [DP].

Brief Summary of Bill

- Enacts the Washington **Voting Rights Act** of 2012.
- Prohibits at-large elections and district-based elections that are drawn or maintained in a manner that denies an equal opportunity for a protected class to elect candidates of its choice or an equal opportunity to influence the outcome of an election as a result of the vote dilution of voters who are members of a protected class.
- Establishes procedures for filing suit and remedies for violation.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Darneille, Dunshee, McCoy and Miloscia.

Minority Report: Do not pass. Signed by 5 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander, Condotta and Hurst.

Staff: Cece Clynn (786-7195).

Background:

Federal Voting Rights Act.

The **Voting Rights Act** of 1965 (VRA) prohibits discrimination in elections. The VRA contains several sections, some of which impact all states and localities and some which do not. For instance,

all states and localities are prohibited from using practices or procedures that impair the ability of a protected class to elect its candidate of choice on an equal basis with other voters. States and political subdivisions are prohibited from conditioning the right to vote on the voter's ability to pass a literacy, subject matter, or morals test. All states and localities must also allow voters who need assistance because of a disability to receive assistance by someone of the voter's choice. Some states, not including Washington, must receive advance clearance for any changes in **voting** practices or regulations. Private citizens, as well as the United States Attorney General, may sue to enforce the VRA.

California Voting Rights Act.

The California **Voting Rights Act** of 2001 prohibits at-large methods of election that impair the ability of a protected class to elect candidates of its choice or limit its ability to influence the outcome of an election as a result of the dilution or the abridgment of the **rights** of voters who are members of a protected class. A violation is established if it is shown that racially polarized **voting** occurs in elections for members of the governing body. The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized **voting**, but may be a factor in determining an appropriate remedy. Proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required.

[illegible]

Summary of Bill:

The Washington **Voting Rights Act** of 2012 (WVRA) prohibits at-large elections and district-based elections that are drawn or maintained in a manner that denies an equal opportunity for a protected class to elect candidates of its choice or an equal opportunity to influence the outcome of an election as a result of the vote dilution of voters who are members of a protected class. "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is defined in the VRA.

An "at-large method of election" means any of the following methods of electing members of the governing body of a political subdivision:

- one in which the voters of the entire jurisdiction elect the members to the governing body;
- one in which the candidates must reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members of the governing body; or
- one which combines at-large elections with district-based elections.

"District-based election" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

An at-large election district or a district-based election district is dilutive, and in violation of the **act**, when it is shown that:

- a political subdivision utilizes an at-large or district-based election district;
- the elections in the political subdivisions are racially polarized;
- the racially polarized **voting** in the political subdivision results in vote dilution where the protected class members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election; and
- a remedy exists that provides members of the protected class with an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.

The fact that members of a protected class are not geographically compact or concentrated to constitute a numerical majority in a proposed district-based election district does not preclude a

finding of racially polarized **voting** that results in vote dilution. Racially polarized **voting** that results in vote dilution is shown by demonstrating that there is a difference in **voting** preferences between members of a protected class and the rest of the electorate. The occurrence of racially polarized **voting** that results in vote dilution may be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the **rights** and privileges of members of a protected class who are voters of the political subdivision which is the subject of an action filed.

Proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required.

Upon a finding a violation, a court must implement appropriate remedies, including the imposition of a district-based election district that is tailored to remedy the violation, but it must be geographically compact. The court may direct the affected jurisdiction to draw or redraw district boundaries, or appoint an individual or panel to draw or redraw district lines. In tailoring a remedy after a finding of a violation of the WVRA, the court must order new elections to be scheduled at the next date authorized by state law for conducting elections. All of the positions that were elected pursuant to the at-large or district-based election that was the subject of the action and have at least two years remaining in their terms of office must be subject to new elections in order to continue their term in office.

Prevailing plaintiffs, but not defendants, are entitled to recover attorneys' fees, as well as a fees multiplier. Plaintiffs are also entitled to recover attorneys' fees and fees multiplier awarded for work performed in any ancillary administrative, legislative, or citizen redistricting commission proceeding where the prevailing plaintiff sought to secure a district-based election district that was different from the one adopted and that was ultimately declared by a court to violate the WVRA. Prevailing defendants may recover costs, but only if the action is frivolous, unreasonable, or without foundation.

There is no prior claim filing requirement, nor is the plaintiff required to file a bond. A cause of action arises every time there is an election. There is no right to a jury trial. An action is to be filed in the superior court of the county where the political subdivision is located, except if the action is against a county, in which case it may be filed in either of the two nearest counties.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The state needs this bill. There have been significant population changes in this state. Without the growth in Latino and Asian populations, Washington would not have gotten the new tenth district. There are seven counties with more than a 20 percent Latino population. There are two with over a 50 percent Latino population. The term "racially polarized **voting**" refers to outcomes; it does not describe the motives of voters. Different patterns in **voting** can be easily shown. In order to prevail in a suit brought under the WVRA, this must be coupled with an election system that dilutes the ability of one group to elect candidates they prefer. One example that might illustrate this issue is to imagine that Washington was divided, as it is now, into legislative districts and that the candidates for a legislative district had to live within that district, but that, rather than be a district-based election system in which only voters in that legislative district could vote, the population of the entire state got to vote for the office-holder for each legislative district. It is probable that the people of King County would determine the outcome of every single election. Racially polarized **voting** is a standard used under the federal VRA. An at-large election district is not automatically violative.

There would have to be a lawsuit filed under the WVRA, the plaintiff would have to prove there was racially polarized **voting** that was dilutive, and only then would the remedies be available.

OneAmerica has registered more than 25,000 new Americans to vote. People need to know that their votes count, and if they do not believe that, they do not participate. Representative democracy only works if people participate. It is possible to analyze **voting** to determine if there is racially polarized **voting** by analyzing those races in which there are quality candidates, because it is to be expected that quality candidates will win some elections. The City of Yakima is 45 percent Latino, but no Latinos have ever been elected to the City Council. Recently, a Latina was appointed to fill a vacancy on the City Council. Despite the fact that she was the incumbent, very qualified, the local newspaper spoke highly of her, and meanwhile her opponent had bad publicity, she lost the election by 5 percent when ordinarily an incumbent wins by 15 percent. People need to know that their votes matter. There is a need to promote representativeness. With this bill voters can move their governments to change to district-based elections. In analyzing **voting**, the voters' motives are unknown. The analysis is done by looking at data. It is time to restore democracy and local control. The current numbers paint a grim picture. This does not criminalize at-large election systems. Rather, there must be proof that there is racially polarized **voting** and that an at-large system prevents the minority candidate from winning.

(Information only) There have been studies done in eastern Washington that have shown that Latino candidates lose due to racially polarized **voting**. This is a statewide issue. Ninety-nine percent of elections in Washington are at-large. Latinos are dramatically under-represented in every office and in every place analyzed across 10 counties in eastern Washington. While there is a federal VRA, it is costly for plaintiffs and this discourages suits. The WVRA will enable the use of state courts. In most cases, state law prevents a fix because the current RCWs limit the ability of political subdivisions to employ a district-based election. Many of the RCWs require at-large election systems. There is almost a complete lack of Latino representation in eastern Washington. It stands at 6 percent if one includes Yakima County, and only 2 percent if Yakima County is excluded. If district-based elections were adopted all across the state, there would be more Latino representation.

(Opposed) None.

Persons Testifying: (In support) Representative Kenney, prime sponsor; Matt Barreto, University of Washington; Pramila Jayapal, Jaszmin Santa Cruz; Toby Guevin, OneAmerica; Kim Abel, League of Women Voters of Washington; and David Perez, Korematsu Center of Seattle University.

(Information only) Paul Apostolidis, Seth Dawson, and Zach Duffy, Whitman College.

Persons Signed In To Testify But Not Testifying: None.

BILL REQ. #: S-3964.1

 SENATE BILL 6381

State of Washington

62nd Legislature

2012 Regular Session

By Senators Prentice, Pridemore, Nelson, Chase, Murray, Conway, Kline, Harper, Keiser, and McAuliffe

Read first time 01/19/12. Referred to Committee on Government Operations, Tribal Relations & Elections.

AN ACT Relating to the Washington **voting rights act**; and adding a new chapter to Title 29A RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1** This **act** may be known and cited as the Washington **voting rights act** of 2012.

NEW SECTION. **Sec. 2** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "At-large method of election" means any of the following methods of electing members of the governing body of a political subdivision:

(a) One in which the voters of the entire jurisdiction elect the members to the governing body;

(b) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body; or

(c) One which combines at-large elections with district-based elections.

(2) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district. District-based elections shall include elections where only one official is elected in a district-based election district and shall include the election districts within existing boundaries of a city, a school district, or other district organized pursuant to state, county, or local law.

(3) "Political subdivision" means a geographic area of representation created for the provision of government services including, but not limited to, a state, a county, a city, a school district, or other district organized pursuant to state law.

(4) "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal **voting rights act** 42 U.S.C. Sec. 1973 et seq.

(5) "Racially polarized **voting**" means **voting** in which there is a difference, as defined in case law regarding enforcement of the federal **voting rights act**, 42 U.S.C. Sec. 1973 et seq., in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group **voting** behavior as approved in applicable federal cases to enforce the federal **voting rights act**, 42 U.S.C. Sec. 1973 et seq., to establish racially polarized **voting** or other evidence and methodologies which a court finds relevant and admissible may be used for purposes of this section to prove that elections are characterized by racially polarized **voting**.

NEW SECTION. Sec. 3 (1) At-large elections and district-based elections may not be drawn or maintained in a manner that denies an equal opportunity of a protected class to elect candidates of its choice or an equal opportunity to influence the outcome of an election, as a result of the vote dilution of voters who are members of a protected class.

(2) An at-large election district or a district-based election district is dilutive, and in violation of this section, when it is shown that:

- (a) A political subdivision utilizes an at-large or district-based election district;
 - (b) The elections in the political subdivision are racially polarized;
 - (c) The racially polarized **voting** in the political subdivision results in vote dilution where the protected class members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election; and
 - (d) A remedy exists that will provide members of the protected class with an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election. Such a remedy will not adversely affect or diminish the impact of those district-based election districts that are protected by the federal **voting rights act**, 42 U.S.C. Sec. 1973, et seq.
- (3) The fact that members of a protected class are not geographically compact or concentrated to constitute a numerical majority in a proposed district-based election district shall not preclude a finding of racially polarized **voting** that results in vote dilution.
- (4) Racially polarized **voting** that results in vote dilution is shown by demonstrating that there is a difference in **voting** preferences between members of a protected class and the rest of the electorate. Such a difference in **voting** preferences may be demonstrated by the methodologies specified in section 2(5) of this **act** or other evidence and methodologies that a court finds relevant and admissible.
- (5) In determining whether there is racially polarized **voting** that results in vote dilution under this section, elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision shall be analyzed. Only elections conducted prior to the filing of an action pursuant to this chapter shall be used to establish or rebut the existence of racially polarized **voting** that results in vote dilution.
- (6) The occurrence of racially polarized **voting** that results in vote dilution will be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the **rights** and privileges of members of a protected class who are voters of the political subdivision which is the subject of an action filed pursuant to this chapter.
- (7) The election of candidates who are members of a protected class and who are preferred by voters of the protected class and who were elected prior to the filing of this action pursuant to this chapter, as determined by an analysis of **voting** behavior, shall not preclude a finding of racially polarized **voting** that results in vote dilution.
- (8) Members of different protected classes may file an action jointly pursuant to this chapter if they demonstrate that their combined **voting** preferences as a group are different from the rest of the electorate and demonstrate that there is racially polarized **voting** that results in vote dilution consistent with the standards established in this section.
- (9) In an action filed pursuant to this section, ninety days after the defendant or defendants file an answer, the plaintiff shall disclose to the other parties the identity of any expert witness retained to testify regarding the existence of racially polarized **voting** that results in vote dilution in elections occurring within the political subdivision that is the subject of the action. This time period may be adjusted by the court for good cause.
- (10) Ninety days after the defendant or defendants have been served with the identity and written report of the expert witness retained by the plaintiff or plaintiffs, the defendant or defendants shall disclose to the plaintiffs the identity of any expert witness retained to testify regarding the existence of racially polarized **voting**.
- (11) Disclosure and written reports shall not be required for an expert that is retained as a nontestifying consultant.

(12) The fact that members of a protected class are not geographically compact or concentrated to constitute a majority within an existing district-based election may not preclude a finding of racially polarized **voting** that results in vote dilution.

(13) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(14) For purposes of any applicable statute of limitations, a cause of action under this section arises every time there is an election pursuant to an at-large method of election or a district-based election district that is the subject of an action pursuant to this section.

(15) A plaintiff initiating an action under this section shall not be required to disclose pursuant to any discovery request or judicial proceeding under this section whether the plaintiff voted in favor of a candidate or did not vote in favor of a candidate. A plaintiff initiating an action under this section shall not be required to disclose pursuant to any discovery request or proceeding under this section whether the plaintiff voted in favor or in opposition of any state propositions and referenda, state initiatives, local measures and referenda, or local initiatives. The plaintiff's right to the secrecy of the plaintiff's vote is preserved and is not waived by the filing of an action pursuant to this section.

(16) In seeking a temporary restraining order or a preliminary injunction a plaintiff shall not be required to post a bond or any other security in order to secure such equitable relief.

(17) An action filed pursuant to this section is a suit based in equity. As a suit in equity, there is no right to trial by jury.

NEW SECTION. Sec. 4 (1) Upon a finding of a violation of section 3 of this **act**, the court shall implement appropriate remedies, including the imposition of a district-based election district that is tailored to remedy the violation. The court may direct the affected jurisdiction to draw or redraw district boundaries or appoint an individual or panel to draw or redraw district lines.

(2) In tailoring a remedy consisting of district-based elections, the court shall implement a district-based election district that is geographically compact. The fact that members of a protected class do not constitute a numerical majority within a proposed district-based election district shall not preclude the implementation of such a district-based election district. In tailoring a remedy, the court shall order the implementation of a district-based election district where the members of the protected class are not a numerical majority in order to provide the protected class an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.

(3) In tailoring a remedy after a finding of a violation of section 3 of this **act**, the court shall order new elections to be scheduled at the next date authorized by state law for conducting elections. All of the positions that were elected pursuant to the at-large or district-based election district that was the subject of the action filed pursuant to this chapter and have at least two years remaining in their terms of office shall be subject to new elections in order to continue their term of office.

NEW SECTION. Sec. 5 (1) In any action to enforce this chapter, the court shall allow the prevailing plaintiff, other than the state or political subdivision thereof, reasonable attorneys' fees and a fees multiplier that takes into account the contingency, the novelty and complexity of the filed action, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs.

(2) Prevailing defendants shall not recover any award of attorneys' fees.

(3) Prevailing defendants shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(4) A fees multiplier is determined by the court by multiplying a numerical value and the fees lodestar. The fees lodestar is determined by multiplying the number of reasonable hours expended by an attorney or support personnel, such as law clerks, paralegals, and legal assistants in the action filed pursuant to this chapter, times a reasonable hourly rate that is consistent with the rates charged by attorneys and firms located within a city or an area where the attorneys and firms filing the action are located.

(5) A prevailing plaintiff shall not be required to first notify a political subdivision prior to the filing of an action pursuant to this chapter that such an action will be filed against the political subdivision in

order for a prevailing plaintiff to be awarded reasonable attorneys' fees, a fees multiplier, and costs pursuant to this section.

(6) A plaintiff shall be deemed to be a prevailing party for purposes of this section if the political subdivision which is the subject of an action filed pursuant to this chapter adopts or implements a district-based election district after the action is filed that is different from the district-based election district that is the subject of the action filed.

(7) A prevailing plaintiff shall recover, as part of reasonable attorneys' fees and fees multiplier award, work performed in any ancillary administrative, legislative, or citizen redistricting commission proceeding where the prevailing plaintiff party sought to secure a district-based election district that was different from the district-based election district ultimately adopted by a governing body or a citizen's redistricting commission and that was ultimately declared by a court to be in violation of section 3 of this **act** in an action filed by the prevailing plaintiff.

NEW SECTION. Sec. 6 Any voter who is a member of a protected class and who resides in a political subdivision where a violation of section 3 of this **act** is alleged may file an action in the superior court of the county in which the political subdivision is located. If the action is against a county, the action may be filed in the superior court of such county, or in the superior court of either of the two nearest judicial districts as determined pursuant to RCW 36.01.050(2). There is no requirement that an action filed pursuant to this chapter be filed as a class action.

NEW SECTION. Sec. 7 Sections 1 through 6 of this **act** constitute a new chapter in Title 29A RCW.

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SENATE BILL REPORT

SB 6381

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 2, 2012

Title: An act relating to the Washington **voting rights act**.

Brief Description: Enacting the Washington **voting rights act** of 2012.

Sponsors: Senators Prentice, Pridemore, Nelson, Chase, Murray, Conway, Kline, Harper, Keiser and McAuliffe.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/24/12, 2/02/12 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6381 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Chase and Nelson.

Minority Report: Do not pass.

Signed by Senator Swecker, Ranking Minority Member.

Minority Report: That it be referred without recommendation.

Signed by Senator Benton.

Staff: Sharon Swanson (786-7447)

Background: The **Voting Rights Act** of 1965 was enacted by Congress in 1965. The **act** was passed to enforce the fifteenth amendment of the United States Constitution to prohibit states from imposing any **voting** qualifications or prerequisite to **voting**, or standard, practice, or procedure to deny or abridge the right of any citizen of the United States to vote on account of race or color. The **act** was extended in 1970, 1975, 1982, and 2006.

Summary of Bill (Recommended Substitute): At-large elections and district-based elections may not be drawn or maintained in a manner that denies an equal opportunity of a protected class to elect candidates of its choice or an equal opportunity to influence the outcome of an election as a result of the vote dilution of voters who are members of a protected class.

An at-large election district or a district-based election district is dilutive, and in violation of the **act** when it is show that:

- a political subdivision utilizes an at-large or district-based election district;

- the elections in the political subdivisions are racially polarized;
- the racially polarized **voting** in the political subdivision results in vote dilution where the protected class members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election; and
- a remedy exists that provides members of the protected class with an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.

The fact that members of a protected class are not geographically compact or concentrated to constitute a numerical majority in a proposed district-based election district must not preclude a finding of racially polarized **voting** that results in vote dilution. Racially polarized **voting** that results in vote dilution is shown by demonstrating that there is a difference in **voting** preferences between members of a protected class and the rest of the electorate.

The occurrence of racially polarized **voting** that results in vote dilution will be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the **rights** and privileges of members of a protected class who are voters of the political subdivision which is the subject of an action filed.

Proof of an intent on the voters or elected officials to discriminate against a protected class is not required.

Upon a finding of a violation of the **Voting Rights Act** of 2012, a court must implement appropriate remedies, including the imposition of a district-based election district that is tailored to remedy the violation. The court may direct the affected jurisdiction to draw or redraw district boundaries or appoint an individual or panel to draw or redraw district lines. In tailoring a remedy after a finding of a violation of the **act**, the court must order new elections to be scheduled at the next date authorized by state law for conducting elections. All of the positions that were elected pursuant to the at-large or district-based election district election district that was the subject of the action and have at least two years remaining in their terms of office must be subject to new elections in order to continue their term in office.

An at-large method of election means any of the following methods of electing members of the governing body of a political subdivision:

- one in which the voters of the entire jurisdiction elected the members to the governing body;
- one in which the candidates must reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members of the governing body; or
- one which combines at-large elections with district-based elections.

District-based elections means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

Protected class means a class of voters who are members of a race, color, or language minority

group, as this class is referenced and defined in the federal **voting rights act** 42 U.S.C. Sec. 1973 etc seq.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute): The definition of political subdivision is amended to remove a reference to the state. The definition of racially polarized **voting** is amended to remove a reference to federal case law. Various other grammatical and technical changes are made.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Minorities in Washington are not equally or fairly represented in elections because of racially polarized **voting**. At-large elections polarize minority voters. Yakima County is 44 percent Latino in population but 0 percent of countywide representatives are Latino. The remedy for this disproportionate outcome is district based elections. Local control is the solution. The federal **voting rights act** is too costly and time consuming to pursue. Washington needs to enact the **voting rights act** at a state level. Minority candidates have shown time and again that they cannot get elected through the at large election system.

OTHER: The fee shifting aspect of this bill is the most one sided and onerous I have ever seen. State and local governments carry all the cost burden. Not only does the government entity pay attorney's fees, the government must also pay the costs for the expert witnesses and administrative costs of the plaintiffs. The government, even if they win the suit, cannot recover their own costs. Under the bill, even if candidates who are members of protected classes get elected, this is not a defense to a charge of racially polarized **voting** or vote dilution. The state is already covered by the **voting rights act** â€“ why do we need this legislation?

Persons Testifying: PRO: Matt Baretto, University of Washington; Paul Apostolidis, Seth Dawson, Zach Duffy, Whitman College; David Perez, Seattle University School of Law; Cherry Cayabyab, Asian Pacific Americans for Civic Empowerment; Fe Lopez, Latino/Latina Bar Association; Pat Dickason, League of Women Voters; Toby Guevin, One America; Tom Hilyard, Black Collective.

OTHER: Jeffrey Even, Attorney General's office.

The Washington Voting Rights Act



David A. Perez, J.D.

**Fred T. Korematsu Center for Law & Equality
Seattle University School of Law**

Democratic Principles – Steady Erosion

2

- Government by consent of the governed
- Government of the people, by the people, for the people
- No taxation without representation

Minority Underrepresentation

3

- **10 Counties in Central Washington**
 - Population: 33% Latino
 - Office holders: 4% Latino
- **Adams County**
 - Population: 55% Latino
 - Office holders: 4% Latino (5 of 137)
- **Franklin County**
 - Population: 50% Latino
 - Office holders: 2.7% Latinos (3 of 110)
- **Grant County**
 - Population: 35.7% Latino
 - Office holders: 4.4% (13 of 297)

The Culprit: At-large Elections Combined with Racially Polarized Voting

4

- 99% of local elections are at-large
- Racially polarized voting: when voters of different racial or ethnic groups exhibit very different candidate preferences in an election.
- Example: Yakima City, which is 44% Latino, but not a single Latino has ever been elected to the city council

The Washington Voting Rights Act

5

- Allows voters to challenge in local state courts electoral methods that deny minority communities “an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.”
- Remedy: district-based elections
- Applies to school boards, city council, county councils, and other political subdivisions

What About the Federal Voting Rights Act?

6

- Too costly, complex, and time-consuming
- Inaccessible to most voters
- Structurally unenforceable and inflexible: only one remedy is available under the federal VRA
- WVRA provides local remedies that are less expensive and more flexible.

A. What is Polarized Voting?

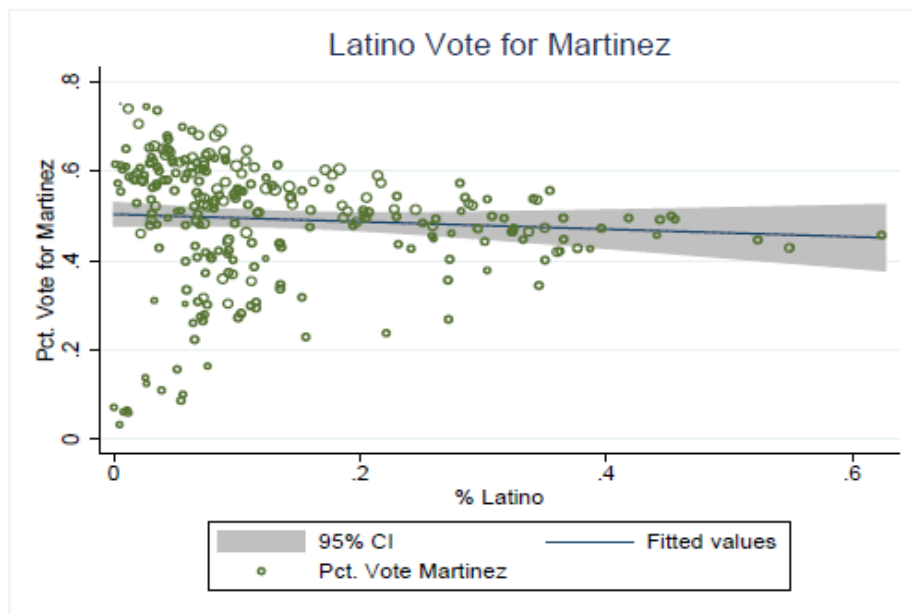
Racially polarized voting exists when voters of different racial or ethnic groups exhibit very different candidate preferences in an election. It means simply that voters of different groups are voting in opposite directions, rather than in a coalition. Racially polarized voting can vary in degree of intensity, and it can be easily measured and quantified using statistical analysis that has been accepted by the courts. Bottom line: minority voters are voting one way, and non-minority voters are voting another way; but because the non-minority voters are more numerous in the at-large system, the minority voters systematically lose. That's why racially polarized voting, combined with an at-large system, has such discriminatory effects.

Example: A simple example is Yakima City. In Yakima election data clearly shows that year after year, election after election, Latino voters strongly tend to favor the Latino candidates, and the White voters strongly tend to vote against the Latino candidates. That's racially polarized voting. It's something we can measure and quantify through precise statistical analysis.

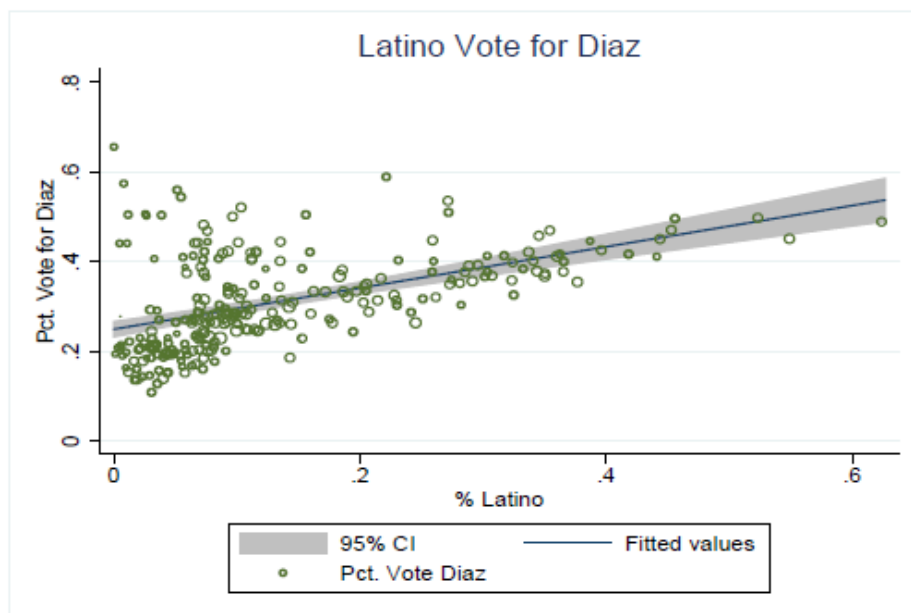
B. How does one determine whether racially polarized voting is happening?

We now have very good data collection methods that can tell us electoral preferences precinct by precinct. And because we also have very detailed demographic data that goes precinct by precinct, we can determine with confidence how certain constituencies are voting. Sadly, this is a result, in part, due to residential housing patterns that show minorities living in different neighborhoods than non-minorities. It's because of this residential segregation that we can measure racially polarized voting.

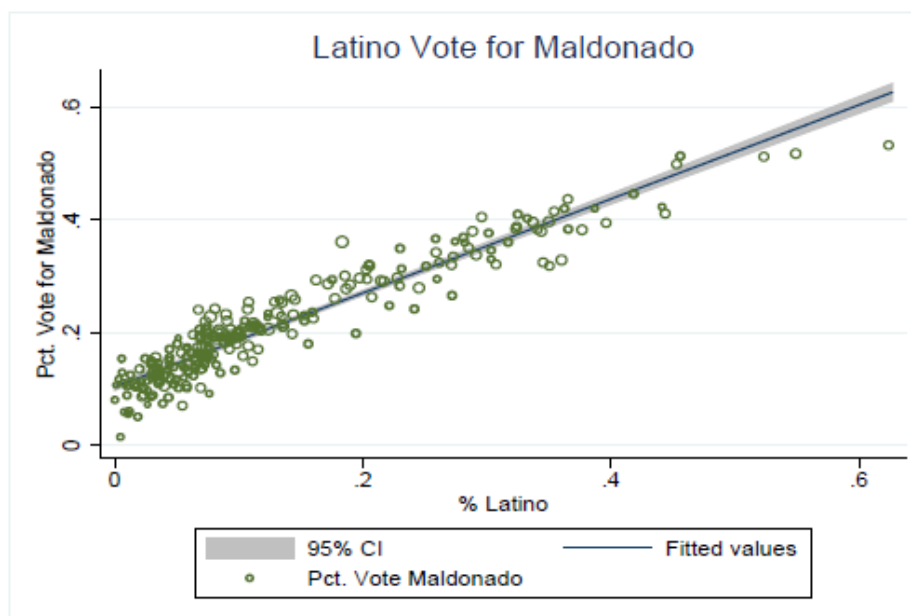
Example: Take Adams County, which is 59% Latino. In Adams County we know where the Latinos are living, by and large, and we know where the non-Latinos are living, by and large. This demographic data is publicly available. We compare the demographic data to the voting patterns, precinct-by-precinct, and through these comparisons we can see whether racially polarized voting is occurring in Adams County. It's a pretty straightforward statistical measure that courts have been using for over 30 years.



1. Example of no polarized voting. The non-Latino precincts on the left side of the chart are not grouped, and the Latino precincts on the right side appear mostly in the middle



2. Racial bloc voting starts to appear. You can start to make out a pattern, but non-Latino precincts are only somewhat cohesive



3. Racial bloc voting is obvious and fits very neatly on a line, where voting patterns are extremely closely related to racial characteristics of the precinct

Table 1 lists the total number of Latino office-holders in 10 counties with more than 10% Latino population

Total Number of Offices	Latino Office-Holders	% Latino
1891	78	4.1%

Table 2 lists the total number of Latino office-holders and their percent makeup of office-holders by county.

County	Total Office-Holders	Latino Office-Holders	% Latino	% Latino Population (2008)
Adams	137	5	3.6%	55.1%
Franklin	110	3	2.7%	49.2%
Yakima	250	40	16.0%	41.4%
Grant	297	13	4.4%	35.7%
Douglas	129	3	2.3%	25.1%
Chelan	182	4	2.2%	23.1%
Walla Walla	139	2	1.4%	18.5%
Benton	137	1	0.7%	16.4%
Okanogan	213	3	1.4%	16.3%
Skagit	297	4	1.3%	14.8%

Source: Zachary Duffer, “Unequal Opportunity: Latinos and Local Political Representation in Washington State.” (2009)

- **Yakima is home to more than ½ of the Latino office-holders but only 13.2% of the total offices.**
- **Excluding Yakima, the percentage of Latino office-holders drops from 4.1% to 2.3%. (Duffy 2009)**

Table 3 shows that underrepresentation occurs in every local office. For instance, there are no Latino judges in any of these counties.

Type of Office	Total Office-Holders	Latino Office-Holders	% Latino
City Council	446	35	7.8%
School District Director	395	29	7.3%
Mayor	72	5	6.9%
Water-Sewer District Commissioner	98	4	4.1%
Drainage / Diking / Flood Control District Commissioner	74	2	2.7%
Hospital District Commissioner	113	2	1.8%
Park and Recreation District Commissioner	65	1	1.5%
Fire District Commissioner	295	0	0%
Cemetery District Commissioner	87	0	0%
Port Commissioner	69	0	0%
County Officer	66	0	0%
Judge	51	0	0%
County Commissioner	30	0	0%
Public Utility District Commissioner	25	0	0%
Conservation District Supervisor	3	0	0%
Airport District Commissioner	3	0	0%

Source: Zachary Duffer, “Unequal Opportunity: Latinos and Local Political Representation in Washington State.” (2009)

Table 4 lists how many positions are elected at-large or district-based.

Type Of Office	# At-Large Electoral Systems	# Mixed Electoral Systems	# District-Based Electoral Systems
City Council	399	38	9
School District Director	395	0	0
Mayor	72	0	0
Water-Sewer District Commissioner	98	0	0
Drainage / Diking / Flood Control District Member	74	0	0
Hospital District Commissioner	113	0	0
Park and Recreation District Commissioner	65	0	0
Fire District Commissioner	295	0	0
Cemetery District Commissioner	87	0	0
Port Commissioner	0	68	0
County Officer	66	0	0
Judge	51	0	0
County Commissioner	0	30	0
Public Utility District Commissioner	23	2	0
Conservation District Supervisor	3	0	0
Airport District Commissioner	3	0	0
	TOTAL: 1744	TOTAL: 138	TOTAL: 9

- **92% of local elections are at-large**
- **1% of local elections are single-member district elections (Duffy 2009)**

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Government Accountability, Oversight and Financial Performance ABT Program Briefing

February 14, 2012

Presented by
Gwen Clemens, Mike Herrin, Caroline Whalen

Briefing Overview

- Accountable Business Transformation Program (ABT) is the County's most significant technology improvement and the largest change in county's business services in history
- Major elements of the program – Finance & payroll activated January 3rd
- System is working
- Budget system implemented for PSB
- County wide Budget rollout in February
- County now has an integrated business system on a technology platform that can grow, evolve, and serve the County and its citizens for many years

ABT Program Objectives

Standardized business processes using:

- one core financial system (Oracle)
- one core human resources/payroll system (PeopleSoft)
- aligning human resources (HR) practices and procedures countywide; and
- standardizing accounting and financial policies and processes
- a new operating and capital budget system (Hyperion)

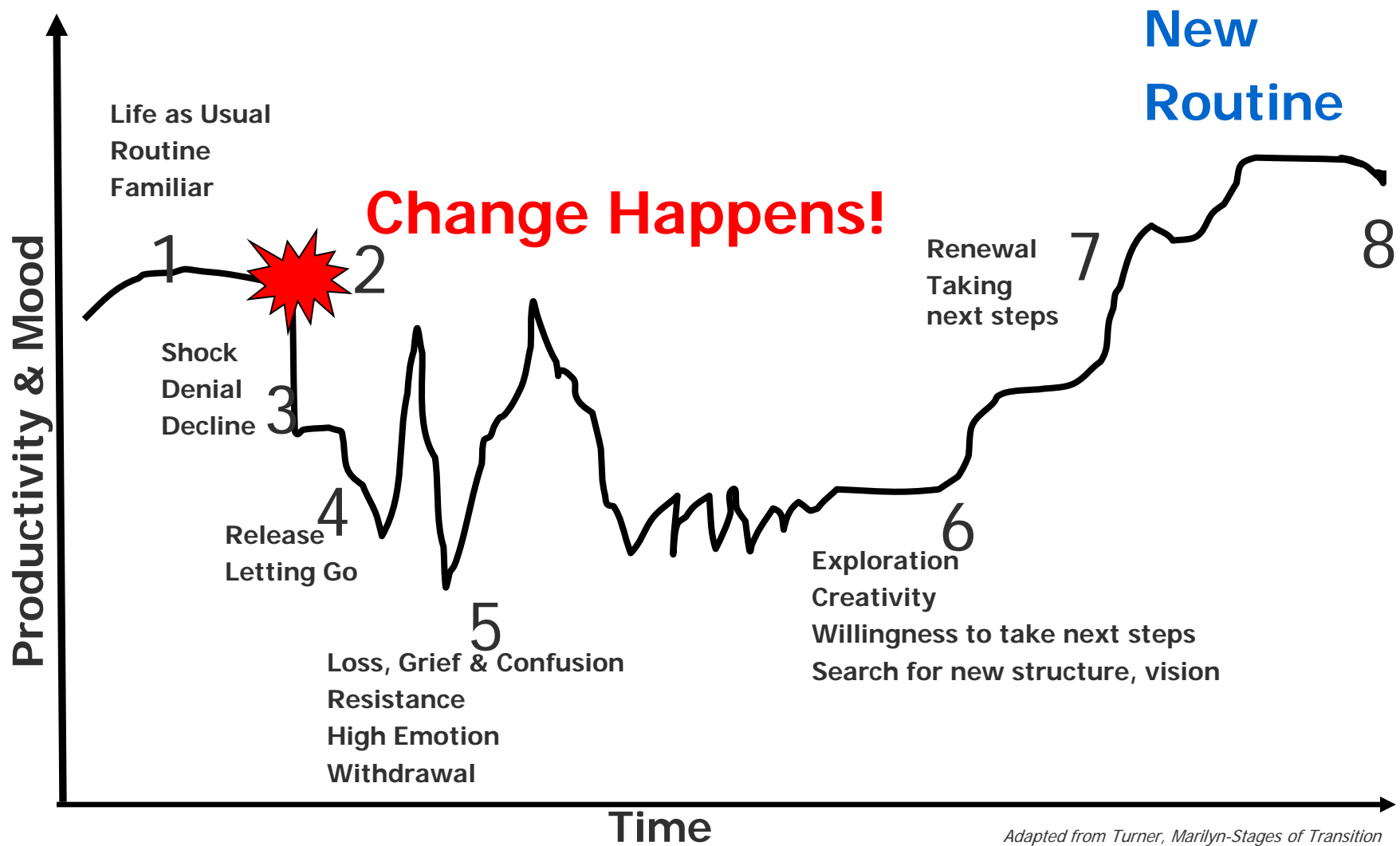
ABT Program Benefits

- Automate and integrate the majority of its financial, budget, human resource, benefit and payroll business processes;
- Share common data and practices across the county;
- Eliminate redundant data entry, transcription and reconciliation;
- Reduce system maintenance and management costs; and
- Produce and access information in real-time for policymakers, managers and constituents.

Achievements and Milestones

- ✓ First Payrolls: January 19 & 20
- ✓ Second Payrolls: February 2 & 6
- ✓ Labor Distribution Performing well
- ✓ First Month End: February 17
- ✓ Budget rollout to agencies: February – April 2012
- ✓ 90 day post production support ends: March 31
- ✓ Performance Management Pilot: September 2012

January 2012 ABT Implementation



Current Issues

- ✓ ABT monitoring and prioritizing all issues
- ✓ Overall, situation better than expected
- ✓ Many user access and security problems
- ✓ Numerous work flow approval issues
- ✓ Many: "How do I do this?" situations
- ✓ Some issues with purchase orders
- ✓ Some issues with vendor payments
- ✓ Some payroll adjustment issues
- ✓ Interface and data conversion problems

Support for Change

- Hundreds of meetings with agencies for two years: groups and individual sessions
- PeopleSoft, Oracle and Hyperion training (will continue)
- Designed and implemented production support operations
- Paycheck communications
- Help Desk and Hotlines
- Visits to agencies by ABT, FBOD, Payroll
- Production Labs
- Constant monitoring of problems and issues
- Transition Checks

Critical Success Factors

- ✓ Committed county leadership
- ✓ Partnership with Unions
- ✓ Significant agency participation
- ✓ Disciplined project management approach by leadership, project team, and central business owners
- ✓ Experienced and dedicated project teams
- ✓ Knowledgeable Oversight and Advisory resources
- ✓ Activities to support agency readiness

ABT Budget Status

ABT Program Appropriations (in millions)	
ABT Program Appropriation	\$73.718
ABT Program Contingency	\$12.919
Total ABT Program Appropriations	\$86.637
Total PRB Fund Release to ABT Program	\$86.172
Unreleased Appropriated Funding	\$ 0.465

Questions

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King County

KING COUNTY AUDITOR'S OFFICE

Capital Projects Oversight

ACCOUNTABLE BUSINESS TRANSFORMATION (ABT) PROGRAM OVERSIGHT REPORT FOR THIRD QUARTER 2011



CURRENT RISK RATING ▼ The new finance and payroll systems will go live on January 3, 2012 unless unforeseen fatal flaws are found during testing next week. The finance system will have defects, and agencies are not fully ready to use the new systems; therefore, confusion is expected. ABT will need to ensure that the remaining budget can adequately fund extensive post-production support of agencies and work necessary to correct system defects post go live.

PROJECT STATUS ● = No Current Concerns ▼ = Attention Needed ◆ = Corrective Action Needed

● **Scope** There have been no scope changes this quarter.

● **Schedule**

On December 6, the ABT Management Team made the decision to go live with Finance and Payroll, Time, and Labor (PTL) systems on January 3, 2012, consistent with the current forecast.

System Projects	Council-Approved Go Live Schedule	Current Forecast	Comments
Human Capital Mgmt	9/2/09	3/16/10 (actual)	Go live occurred 6½ months late
PTL Group 1	1/3/11	1/3/12 (all groups)	One-year delay
PTL Groups 2 and 3	Group 2 - 7/3/11		Six-month delay
	Group 3 - 1/1/12		No delay
Finance	1/1/11	1/3/12	One-year delay
Operating/Capital Budget	4/1/12	2/28/12	30-day acceleration
Performance Management	12/31/12	6/2012	Completion of pilot project
		12/2012	Completion of countywide plan

▼ **Budget** Forecast costs at completion include use of an additional \$2 million of contingency.

Budget Category	Council-Approved Budget	Expenditures thru September 2011	Expenditures as % of Approved Budget	Forecast Costs at Completion*	Forecast Variance from Approved Budget
Planning	\$9,032,857	\$8,675,923	96%	\$8,675,923	(\$356,934)
Implementation	64,685,283	44,797,059	69%	65,042,217	356,934
Contingency	12,919,007	2,605,737	20%	12,454,247	(464,760)
Total	\$86,637,147	\$56,078,719	65%	\$86,172,387	(\$464,760)

* From ABT 3rd Quarter 2011 Report.

▼ **What to Expect at Go Live**

- There will be confusion at go live. ABT plans enhanced support activities to lessen confusion.
- The finance system has numerous known defects that will not be fixed by January 3. Additional defects may be identified during final testing in late December.
- Not all reports from the finance system will be functional on January 3.
- Despite ABT's focus on agency readiness, not all agencies report that they are adequately prepared to use the new systems.
- The first payroll on January 19 is expected to have a high degree of accuracy. However, the change to biweekly pay is likely to generate a large volume of employee questions.
- Enhanced post-production support will come from additional staff, priority status for assistance from Oracle, select agency payroll support, hotlines, and 24-hour ABT staffing.
- We do not know whether these support activities will keep county and external agencies from experiencing adverse business impacts during the early months using the new systems.

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King County Auditor's Office – Cheryle Broom, County Auditor

The King County Auditor's Office was created in 1969 by the King County Home Rule Charter as an independent agency within the legislative branch of county government. Its mission is to promote and improve performance, accountability, and transparency in King County government through conducting objective and independent audits and services.

Capital Projects Oversight Program – Tina Rogers, Manager

The Capital Projects Oversight Program (CPO) was established within the auditor's office by the Metropolitan King County Council through Ordinance 15652 in 2006. Its goal is to promote the delivery of capital projects in accordance with the council approved scope, schedule, and budget; and to provide timely and accurate capital project reporting.

CPO oversight reports are available on the auditor's website (www.kingcounty.gov/auditor/reports) under the year of publication. Copies of reports can also be requested by mail at 516 Third Avenue, Rm. W-1033, Seattle, WA 98104, or by phone at 206-296-1655.

**ALTERNATIVE FORMATS AVAILABLE UPON REQUEST
CONTACT 206-296-1655 OR TTY 206-296-1024**

INTRODUCTION

This is the twelfth quarterly oversight report prepared for and submitted to the Government Accountability and Oversight Committee by the Capital Projects Oversight (CPO) Program. The purpose of this report is to provide the County Council with a timely update on the status of the Accountable Business Transformation (ABT) Program and what to expect when the new finance and payroll systems go live.

On December 6, the ABT Management Team gave direction to go live with the new finance and payroll systems on January 3, 2012 as planned. For the past several months, the ABT program manager has communicated a consistent message to “expect some defects, problems, issues, and a certain amount of confusion” when the new systems go live. This is due in part to the simultaneous go live schedules for two very complex countywide information technology systems, rather than the original phased implementation schedule. Under the original schedule, ABT had planned to mitigate risk by completing the finance system testing and training four months in advance of the Payroll, Time, and Labor (PTL) system, but did not meet their revised schedule milestones.

In addition, the magnitude of business process changes that will be required of King County agencies is extensive. Despite ABT’s efforts to prepare county agencies for business process changes, some agencies are still unclear what business processes need to change, and how to change their practices to most effectively use the new systems. To some extent, this may also apply to cities and special districts that rely on the county for treasury and other financial services. In the past quarter, ABT has devoted resources to communicate with and support these external agencies as they prepare for the county’s transition to a new finance system.

Today, the message remains the same. At our oversight meeting with ABT on December 8, with less than four weeks remaining before go live, much work remained to be done, including final testing, user training, cutover¹ activities, and planning for support to agencies during the 90-day post-implementation stabilization period. Finance and payroll system challenges are expected to continue during the stabilization period. Agency staff are likely to experience increased work demands related to the new systems, as well as preparing to use the new ABT budget system that is scheduled to go live on February 28.

The new finance and payroll system will go live on January 3 unless unforeseen fatal flaws are discovered in the final testing during the last week in December. ABT will need to ensure that the remaining budget can adequately fund resources for the post-production activities needed to support agencies’ use of the new systems to conduct county business and to correct remaining system defects post go live. We, therefore, continue to show the overall risk level for the ABT Program as yellow. Our overall observation is that ABT is taking prudent actions to enhance governance engagement, target and intensify communication, and add more resources. We do not know, however, whether these enhanced support activities will keep county and external agencies from experiencing adverse business impacts.

¹ “Cutover” refers to switching from an old hardware and/or software system to a new replacement system.

CURRENT STATUS

In anticipation of go live issues, within the past few months, the ABT Program strengthened the coordination with the ABT Management Team. Weekly meetings included comprehensive status briefings on testing results, known finance system defects, agency readiness, and any emerging issues. The ABT Management Team heard from managers within key county departments, including Finance and Business Operations (FBOD) and Human Resources, the business owners of the finance and payroll systems, regarding outstanding agency concerns and ABT's planned support enhancements before approving the decision to go live on January 3. Below are status updates on the most critical activities that ABT is focused on at this time.

Finance Project. The Finance Project will implement the Oracle E-Business Suite for the county's financial activities, including accounting, cash management, accounts payable and receivable, and procurement. The schedule for completion of finance system testing had been August 2011, but system development, side system interface testing, and final testing activities have taken longer than planned, even with night, weekend, and holiday work by ABT management, staff, and contractors.

According to the ABT program manager, the finance system is "the highest risk area of the ABT Program." As of December 8, some development work still needed to be completed and tested. Important side-systems had yet to be re-tested with final versions of system interfaces. Defects are being discovered, and are likely to continue to be discovered up to and after go live. The manager characterizes this as normal for implementations of this complexity, noting most defects are technical in nature and not noticeable to users. The manager further notes that a few defects, such as a side-system interface for processing requisitions, are critical to county business needs and must be fixed before go live. ABT has been prioritizing and fixing critical defects, while deferring non-critical items until after go live and providing agencies with instructions for manual "workarounds" to be used until the defects can be corrected. ABT plans for all side systems to be functional at go live. They have deferred work to fix lower priority defects and some reports that use finance system data.

Payroll, Time, and Labor Project. The new PeopleSoft payroll system will implement countywide timekeeping processes for all county employees and migrate the portion of the county (approximately two-thirds) that is currently paid on a semi-monthly pay cycle to a biweekly pay cycle. The exceptions are King County Sheriff's Office (KCSO) employees and paramedics, who will migrate to PeopleSoft but retain a semi-monthly pay cycle. The KCSO will move to a biweekly pay cycle in conjunction with their new scheduling system.²

As of December 8, payroll system design and development were complete, and testing of the accuracy of payroll calculations was nearing completion with ABT reporting good results. The testing has taken place in three phases over the past few months. Pay calculation for more than 90 percent of county employees was included in the second test, with results showing a small percentage (4 to 5 percent) of paychecks with minor pay differences that were not expected as a result of the new pay cycle. ABT reports that all exceptions that are not explained and acceptable have been or will be resolved before go live. In addition, detailed payroll calculations (deductions, tax calculations, etc.) were found to be accurate. The third and final validation is complete with ABT reporting similar results, although two agencies continue to have concerns about PTL implementation.

² KCSO last reported to the Project Review Board in January 2011 that their new electronic scheduling system is planned to be implemented in April 2013.

Agency Readiness. Our previous reports have noted the importance of county agencies actively participating in readiness activities to ensure that agency staff not only understand the functionalities of the new systems, but also have modified their business processes to allow full use of the systems. County agencies, ABT's quality management consultant, Pacific Consulting Group (PCG), and ABT management continue to cite agency readiness as a concern. Such concern at this late date raises questions about the effectiveness and timeliness of ABT's change management, training, and other readiness activities as well as the level of effort agencies have devoted to their preparation activities.

PCG conducted interviews with several county agencies in October and November to assess readiness. PCG concluded in its October report that "we remain concerned that agencies are unprepared for the significant business process changes they will encounter as a result of the ABT implementation." Their November report included that same concern and noted that "serious readiness issues" related primarily to PTL implementation remain for two agencies – King County Sheriff's Office and the Department of Adult and Juvenile Detention. ABT acknowledged agency readiness as an issue in its December quarterly report, indicating that "given the magnitude of the business process and technical changes being introduced by the ABT Program, agencies are reporting they have not received the information required to complete readiness activities," adding that it is reasonable for agencies to be expressing "uncertainty and anxiety." ABT will continue to assist agencies up to go live and during the stabilization period, but has indicated that agencies are responsible for aligning their internal business processes to the new central processes resulting from the implementation of the new systems.

WHAT TO EXPECT AT GO LIVE AND BEYOND

Known Issues. The "confusion" the ABT program manager has been predicting following go live will come in many forms. Even though key agency staff have been trained in the new finance system, there will still be questions about how to fully use the system and the "workarounds" that are needed due to known defects that will not be immediately fixed. There are also unknown issues. It is likely that new defects will be discovered, both during testing in late December and after go live, which will require additional communication with agencies. Cities and special districts may have questions about new requirements for submitting financial data to King County for use with the new system.

Although ABT has been preparing employees for the new PeopleSoft paystubs by meeting with employee groups and distributing written information about what to expect, employees are very likely to have questions on January 19 when the first pay period is processed by the new system. Agency payroll clerks may not be prepared to answer all employee questions or handle the volume of inquiries. Problems may also occur with individual desktop configurations and access to the finance system, and employee self time entry, involving new project and task codes.

Additional Resources Available. In order to prepare for issues that will occur after go live, ABT is keeping some staff longer than planned and adding new staff. Some Ciber technical support and functional analysts will stay on longer than planned to help address system defects after go live. ABT project coordinators will stay longer to continue their support to agency staff in their use of the new systems. ABT recently negotiated a contract with Oracle to provide high-priority status on-call assistance to help ABT troubleshoot and solve any software related problems that may arise. As of December 1, the ABT program sponsor delegated her non-ABT duties to her deputy and is located temporarily within the ABT offices to be available and provide enhanced support to the ABT Program team.

ABT continues to diligently monitor expenditures and forecast final cost at completion to ensure that they have sufficient appropriation to fund additional, unplanned resources. Attachment A shows that actual expenditures continue to fall below planned expenditures. Average monthly expenditures in the third quarter were approximately \$2.4 million, which is 5 percent higher than last quarter. In October, ABT notified the County Council of planned use of an additional \$2 million of contingency funds, anticipating leaving \$464,700 of contingency unspent at the end of the project. Continued monitoring will be needed to ensure that the additional resources are adequate to finish the work and if not, that the project budget can support further enhancements. At this time, ABT does not anticipate needing additional appropriation for the project.

Post Implementation Support. For the past few months, ABT has been working on a post-implementation support plan to deal with potential issues and to provide support to agencies during the three-month stabilization period following go live. The post-implementation plan calls for ABT, Ciber, and Business Resource Center³ staff to form blended teams to provide support to agencies for the new systems, along with the county's existing information technology help desk.

The elements of the post-implementation support plan are summarized on the ABT website and consist of, for example: (1) monitoring system operation on a 24-hour basis; (2) prioritizing defects and assigning resources for fixes; (3) establishing a "Hotline" to take calls and forward them to payroll and finance system experts as needed; (4) a coordinated strategy to answer employee payroll questions, starting with agency payroll clerks, then elevating error resolution or system problems to ABT staff; and (5) providing on-site support to agencies for some critical activities, such as cash management and employee self-service time entry. The ABT website will continue to be an important resource and will change to a design created for ongoing customer service to support user needs.

CONCLUSION

In the final weeks before the finance and payroll system go live date in January, the ABT Management Team is attempting to complete testing, fix problems, prioritize resources, and generally improve the readiness of systems and agencies. Concurrently similar activities are underway associated with the new budget system, which is planned to go live in February. While ABT management acknowledges that there will be problems after the go live dates, they also are discussing mitigation strategies in their post implementation plan for how to deal with known and unforeseen issues.

Looking past go live, ABT will need to continue to finalize development work, fix new problems as they emerge, and support county and external agencies as they use the new systems. Because the demands on the ABT program and agencies will continue after go live, it is unclear whether the enhanced resources and post-implementation support activities will be adequate to keep county and external agencies from experiencing impacts to their business during the early months of using the new systems.

ACKNOWLEDGEMENTS

We conduct our oversight through monthly meetings with a working group of staff from the ABT Program, County Auditor, Council, and Office of Performance, Strategy and Budget (PSB) and through other meetings as needed. We also review and conduct independent analysis where appropriate on formal reports and other documentation provided by the ABT Program. In addition, we coordinate our oversight

³ The Business Resource Center is the new entity within the Department of Executive Services that will be responsible for ongoing maintenance and support for ABT systems following ABT's 90-day post-production period.

efforts by reviewing the reports of the Project Review Board and PCG, the quality management consultant that reports directly to the ABT program sponsor.

We appreciate the collaborative efforts of the staff from the ABT Program and PSB for their input to effective oversight of the ABT Program and their responsiveness despite the many demands on their resources as go live dates approach. We also appreciate the assistance from PCG and the staff of the Project Review Board towards coordinated oversight of this important countywide program. This report was prepared by Ron Perry, Tina Rogers, and Shelley Sutton. Should you have questions or comments on the report, please contact Tina Rogers, Capital Projects Oversight Manager or Ron Perry, Deputy County Auditor.

DISTRIBUTION

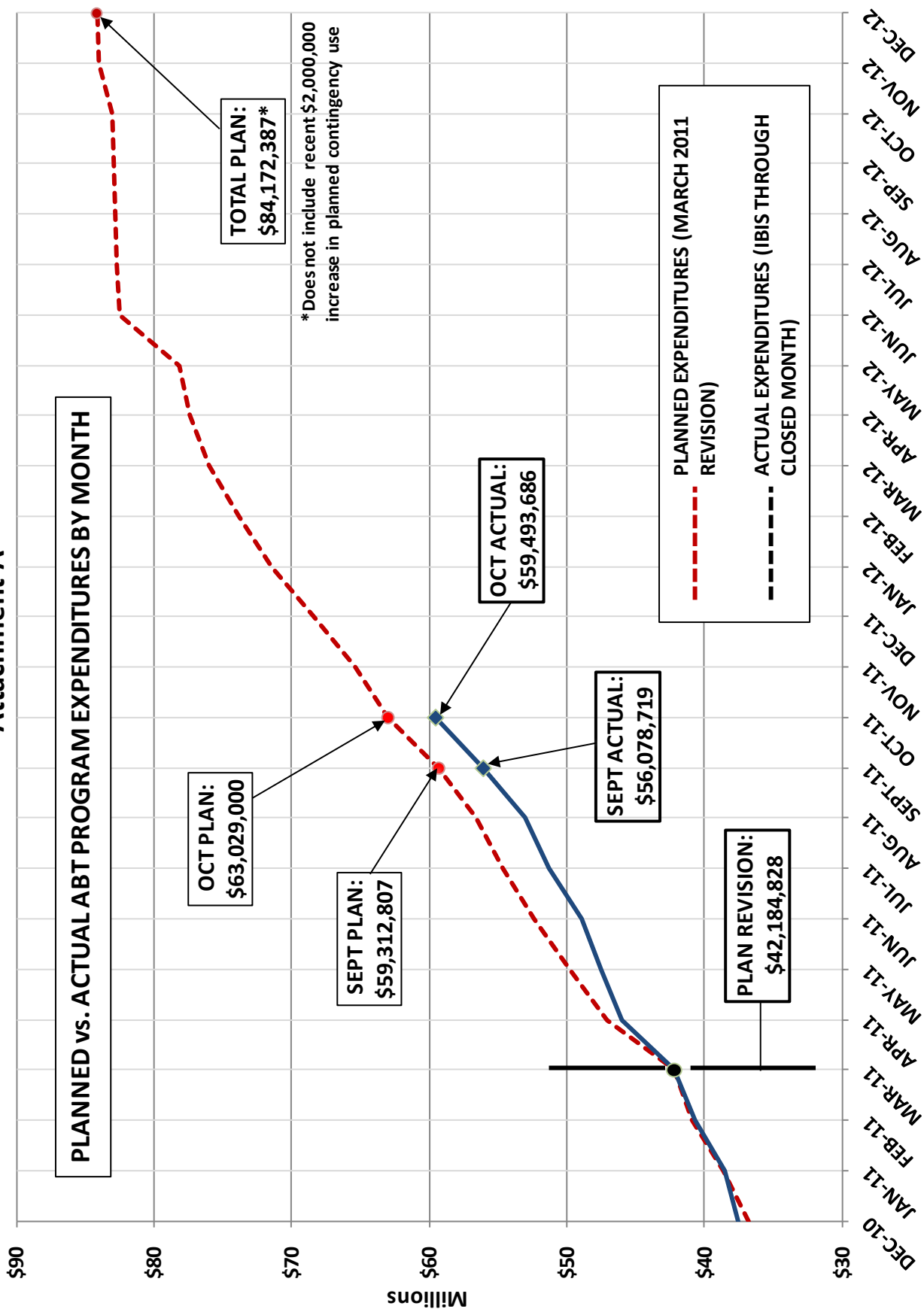
King County Government Accountability and Oversight Committee

cc: Metropolitan King County Councilmembers
Dow Constantine, County Executive, King County Executive Office (KCEO)
Caroline Whalen, County Administrative Officer, Department of Executive Services (DES)
Rhonda Berry, Assistant County Executive, KCEO
Bill Kehoe, County Chief Information Officer, Office of Information Resource Management, KCEO
Zlata Kauzlaric, IT Governance Manager, Office of Information Resource Management, KCEO
Dwight Dively, Director, Office of Performance, Strategy and Budget, KCEO
Gwen Clemens, ABT Program Deputy Sponsor, DES
Mike Herrin, ABT Program Manager, DES
Jennifer Giambattista, Policy Staff, Metropolitan King County Council (MKCC)
Pat Hamacher, Policy Staff, MKCC
Robert Fuller, Senior Associate, Pacific Consulting Group, Inc.

ATTACHMENT

Attachment A – Planned vs. Actual ABT Program Expenditures by Month

Attachment A





King County

Government Accountability and Oversight Committee

STAFF REPORT

Agenda Item:	7	Name:	Mike Alvine
Proposed No.:	2011-0493	Date:	February 14, 2012
Invited:	Ken Guy, Director, Finance and Business Operations Division, DES		

SUBJECT: An ordinance making willful violation of wage payment requirements a basis for debarment or suspension from consideration for the award of contracts with the county; and amending Ordinance 12138, Section 18, as amended, and K.C.C. 4.16.145.

SUMMARY:

The ordinance would give the Executive authority to debar or suspend a vendor or contractor from doing business with King County if the Washington State Department of Labor and Industries finds the company in “willful” violation of state wage provisions.

BACKGROUND:

King County Code 4.26.245 already authorizes the Executive to suspend or exclude (debar) firms from doing business for various activities including criminal offenses of state or federal law such as theft, forgery, bribery, falsification or destruction of records, receiving stolen property and violation of antitrust statutes. In addition, the Executive can suspend or debar companies from doing business with King County for unsatisfactory performance in a recent contract or engagement and for ethics violations.

The Washington State Department of Labor and Industries (L&I), among other responsibilities, is the watchdog agency that ensures employers follow the minimum wage law, pay overtime correctly and pay employees their earned wages, including their last paycheck when separating employment. This authority can be found in chapter 49.48 RCW. Last year L&I reported over 4,000 complaints by employees of employers who failed to properly pay employees according to state and federal law. This failure to pay is commonly referred to as “wage theft”. L&I investigates these claims and must make a determination if the complaint is valid within 60 days. If L&I determines that an employer has illegally withheld wages from an employee they issue a citation and the employer is obligated to pay the wages due. In certain cases that meet RCW criteria, L&I can find the employer is in “willful” violation of wage laws. In other words, the employer is **knowingly violating** wage laws and civil penalties can apply. L&I considers an employer to be a “repeat willful violator” if they have two willful violation determinations in a three-year period.

ANALYSIS:

Chapter 49.48 RCW provides L&I with specific authorities and remedies to pursue employers found in violation of state wage laws. The ordinance would give the Executive authority to debar or suspend a vendor or contractor from doing business with King County if L&I finds a company in “willful” violation of state and federal wage provisions. While the legislation provides the Executive with this suspension or debarment authority, it does not require the Executive to exercise this authority.

AMENDMENT:

Executive staff has reviewed the legislation and discussed it with the Prosecuting Attorney’s Office. The PAO has recommended that the legislation refer to the entire relevant section of the RCW rather than just part of the section. With this amendment, the Executive supports the legislation. Staff has prepared such an amendment for the Committee’s consideration.

ATTACHMENTS:

1. Proposed Ordinance 2011-0493
2. Amendment 1 to Proposed Ordinance 2011-0493



KING COUNTY

Attachment 1

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

February 10, 2012

Ordinance

Proposed No. 2011-0493.1

Sponsors Ferguson and Gossett

1 AN ORDINANCE making willful violation of wage
2 payment requirements a basis for debarment or suspension
3 from consideration for the award of contracts with the
4 county; and amending Ordinance 12138, Section 18, as
5 amended, and K.C.C. 4.16.145.

6 STATEMENT OF FACTS:

- 7 1. King County's vision, as stated in the county's strategic plan, is to be "a
8 diverse and dynamic community with a healthy economy and environment
9 where all people and businesses have the opportunity to thrive." Among
10 the guiding principles contained in the strategic plan are accountability,
11 fairness and justice.
- 12 2. Employer violation of wage payment requirements runs contrary to
13 King County's vision and guiding principles. Such violations, also known
14 as "wage theft," can take a number of forms, including withholding an
15 employee's last paycheck when the employee leaves a job, not paying for
16 all hours worked, stealing tips, failing to pay overtime as required and
17 paying less than the minimum wage.
- 18 3. Wage theft is a nationwide problem. According to a 2008 survey
19 funded by the Ford Foundation, of the 4,387 workers interviewed in low-

20 wage industries in the three largest United States cities-Chicago, Los
21 Angeles, and New York-sixty-eight percent had experienced at least one
22 pay-related violation of the law in the previous work week. The average
23 worker lost \$51 out of average weekly earnings of \$339 for a loss of
24 fifteen percent of earnings.

25 4. In Washington State, according to the Washington State Department of
26 Labor & Industries, an average of eleven Wage Payment Act violation
27 claims are filed each day, totaling over 4,000 claims in 2010.

28 5. Wage theft commonly occurs in low-wage industries, but is not limited
29 to any particular sector of the economy, and no group of workers is
30 immune.

31 6. Wage theft detrimentally impacts workers and hurts businesses that
32 follow the law. Businesses are placed at a disadvantage when competitors
33 keep costs artificially low by unlawfully withholding payments from their
34 employees. Taxpayers shoulder a disproportionate share of the national
35 tax burden when employers fail to pay payroll taxes. Unpaid workers are
36 deprived of money to buy goods and services that benefit their families
37 and the local economy.

38 7. The elimination of wage theft will foster fair business practices and
39 promote the dignity and economic security of employees.

40 8. Currently, in Washington State, wage theft complaints are handled by
41 the Washington state Department of Labor and Industries. Wage theft is
42 punishable by civil fines and the recovery of lost wages by the employee.

According to RCW 49.48.082 through 4.48.087, the Department of Labor and Industries issues a citation for a willful violation when an employer has violated a wage payment requirement and the violation was knowing and intentional and neither accidental nor the result of a bona fide dispute.

9. King County contracts with outside vendors, awarding an average of 500 professional, construction, and goods and services contracts each year.

Since 2006, the county has awarded more than 3,000 contracts to over 4,000 outside vendors for a combined total of over \$3.5 billion.

10. King County should not reward employers who are "willful violators" of state wage laws by awarding them a county contract.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 12138, Section 18, as amended, and K.C.C. 4.16.145 are hereby amended to read as follows:

The executive shall comply with the following procedures in contract debarment and suspension actions.

A. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the executive shall have authority to debar a person, firm or other legal entity for cause from consideration for award of contracts with the county. The debarment shall be for a period of not more than two years.

B. The executive shall have the authority to suspend a person, firm or other legal entity from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period of not more than six months.

65 C. The authority to debar or suspend shall be exercised in accordance with
66 procedures established by the executive.

67 D. The causes for debarment or suspension include the following:

68 1. Conviction for commission of a criminal offense as an incident to obtaining
69 or attempting to obtain a public or private contract or subcontract, or in the performance
70 of such contract or subcontract;

71 2. Conviction under state or federal statutes of embezzlement, theft, forgery,
72 bribery, falsification or destruction of records, receiving stolen property, or any other
73 offense indicating a lack of business integrity or business honesty which currently,
74 seriously, and directly affects responsibility as a contractor to the county;

75 3. Conviction under state or federal antitrust statutes arising out of the
76 submission of bids or proposals;

77 4. Violation of contract provisions, such as the following, of a character which
78 is regarded by the executive to be so serious as to justify debarment action:

79 a. deliberate failure without good cause to perform in accordance with the
80 specifications or within the time limit provided in the contract~~((, or))~~;

81 b. substantial failure to comply with commitments to and contractual
82 requirements for participation by minority and women's business enterprises and equal
83 employment opportunity~~((, or))~~; or

84 c. a recent record of failure to perform or of unsatisfactory performance in
85 accordance with the terms of one or more contracts; provided that failure to perform or
86 unsatisfactory performance caused by acts beyond the control of the contractor shall not
87 be considered to be a basis for debarment;

88 5. Violation of ethical standards set forth in contracts with the county;~~((or))~~

89 6. Willful violation of a wage payment requirement, as defined in RCW
90 49.48.082(12), where the citation and notice of assessment for the violation was issued
91 within the three years preceding commencement of the debarment or suspension; or

92 7. Any other cause that the executive determines to be so serious and
93 compelling as to affect responsibility as a contractor to the county, including debarment
94 by another governmental entity for any cause similar to those set forth herein.

95 E. The executive shall issue a written decision stating the reasons for the
96 debarment or suspension. Such a decision shall be promptly mailed or otherwise
97 furnished to the debarred or suspended person and any other party intervening.

98 F. The executive's decision of debarment or suspension, unless fraudulent, shall
99 constitute the final and conclusive decision on behalf of the county. After a final decision
100 has been made, the executive shall submit a report to the council giving the name of the

101 person, firm or other legal entity suspended or debarred and the reason~~((s))~~ or reasons
102 for such a suspension or debarment.
103

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, ____.

Dow Constantine, County Executive

Attachments: None

1

February 14, 2012

ma

Sponsor: _____

Proposed No.: 2011-0493

1 **AMENDMENT 1 TO PROPOSED ORDINANCE 2011-0493, VERSION 1**

2 On page 5, beginning on line 89, after "Willful violation of a wage payment requirement"
3 delete, ", as defined in RCW 49.48.082(12), where the citation and notice of assessment
4 for the violation was issued", and insert, "under chapter 49.48 RCW where the citation
5 and notice of assessment for the violation was issued by the Washington State
6 Department of Labor and Industries".

7

8 **EFFECT: Makes the County Code refer to the entire section of the Revised Code of**
9 **Washington that governs violations of wage payments, rather than just referring to**
10 **a portion of the relevant RCW.**